

HOUSE BILL 3179

By Cobb J

AN ACT to amend Tennessee Code Annotated, Title 4,
relative to homeland security.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) As a result of the unprecedented and devastating attack of September 11, 2001, upon the people and the vital infrastructure of the United States of America and the possibility that such attacks may be perpetrated in the future by persons identified as terrorists and other enemies of this country, and in order to ensure that preparations will be adequate to deal with such events and to generally provide for the common defense and to protect and preserve the life, health, welfare, and property of the people of Tennessee, it is found and is declared to be necessary to:

- (1) Create a state department of homeland security;
- (2) Confer upon the governor the powers provided in this act;
- (3) Provide for the rendering of aid to the political subdivisions of the state, and between other states, and the federal government with respect to performing the functions essential to homeland security; and
- (4) Authorize necessary and appropriate action to implement this act.

(b) It is further declared to be the purpose of this act and the policy of the state of Tennessee to assist, coordinate, and encourage homeland security preparedness by state departments and agencies and political subdivisions of the state by authorizing the making of grants, as funds are appropriated for such purpose, to any political subdivision of the state in amounts not to exceed the amounts authorized, for the purpose of promoting homeland security.

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, is amended by adding Sections 3 through 16 of this act as a new part thereto.

SECTION 3. This act shall be known and may be cited as the "Tennessee Homeland Security Act of 2008".

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the department of homeland security;

(2) "Department" means the department of homeland security;

(3) "Homeland security" means the development, coordination, and implementation of a state policy to secure the state of Tennessee from terrorist threat or attack. The term includes efforts to detect, prepare for, prevent, protect against, share intelligence where applicable, respond to, and recover from terrorist attacks within the state of Tennessee; and

(4) "Political subdivision" means a county, city, town, or utility district in the state of Tennessee.

SECTION 5.

(a) The department of homeland security is created within the executive branch of the state government, and shall be inclusive and reflect the racial, gender, geographic, urban or rural, and economic diversity of the state.

(b) The department is designated as the principal state agency to coordinate the receipt, distribution, and monitoring of all funds available from any source for the purpose of providing equipment, training, research, and education in regard to homeland security related items, issues, or services. The department is further designated and authorized to coordinate and establish standards for all operations and activities of the state related to homeland security efforts.

SECTION 6.

(a) There is hereby created the position of commissioner of homeland security. The commissioner shall be the head of the department. The commissioner shall be appointed by and hold office at the pleasure of the governor.

(b) The commissioner, subject to the direction and authority of the governor, shall be the executive head of the department and shall be responsible to the governor for coordinating, designing, and implementing Tennessee's program for homeland security. The commissioner shall be the principal point of contact for and to the governor with respect to homeland security issues.

(c) The commissioner shall:

(1) Receive intelligence information from federal authorities relating to homeland security and ensure that, to the extent allowed by law, all appropriate and necessary intelligence and law enforcement information regarding homeland security is disseminated to and exchanged among appropriate executive departments responsible for homeland security, and where appropriate, promote the exchange of such information with county and local governments and private entities.

(2) Assist in planning and executing exercises and simulations designed to practice the systems that would be utilized in response to a terrorist threat or attack within Tennessee.

(3) Assist in state efforts to ensure public health preparedness for a terrorist event.

(4) Engage in the exchange of information with the federal government relating to immigration and efforts to improve the security of the borders, territorial waters, and ports of the United States.

(5) Coordinate the efforts to protect the people of Tennessee and the state's infrastructure from terrorist attack, including, but not limited to, energy production, transmission and distribution systems, telecommunications, nuclear facilities, public and privately owned information systems, special public and private events, transportation hubs and networks, livestock, water, food supplies, and research institutions. Notwithstanding any other provision of this act to the contrary, the commissioner shall not impose security requirements on any private sector facility that are inconsistent with requirements applicable to private sector facilities pursuant to federal law or regulations, including those adopted by the nuclear regulatory commission, the federal energy regulatory commission, the federal department of homeland security or other federal agencies.

(6) Ensure that state, county, and local governmental agencies and authorities coordinate and cooperate with private sector security forces responsible for the protection of critical infrastructure consistent with federal laws and regulations applicable to private sector security forces related to homeland security issues.

(d) The commissioner shall coordinate the strategy of the executive branch for communicating with the public in the event of a terrorist threat or attack within the state of Tennessee. The commissioner shall also coordinate the development of programs for educating the public about the nature of terrorist threats and appropriate precautions and responses.

(e) The commissioner shall provide information and advice to the commissioner of finance and administration and to the senate and house finance, ways and means committees on the level and use of funding for state departments and agencies relating to homeland security. Prior to the governor transmitting the proposed annual budget to

the general assembly, the commissioner shall certify to the commissioner of finance and administration the funding levels that are necessary and appropriate to carry out the homeland security activities of the executive branch.

(f) The commissioner and other personnel of the department shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(g) The commissioner shall have such additional authority, duties, and responsibilities as may be prescribed by the governor within the confines of this act.

SECTION 7. Within budgetary limitations and subject to approval of the commissioner of human resources, the commissioner may establish personnel policies and salary schedules for all employees of the department. The commissioner may appoint assistant commissioners who shall reflect the racial, gender, geographic, urban, rural, and economic diversity of the state.

SECTION 8. In performing his or her duties under this act, the commissioner may perform all of the following duties, under the direction and control of the governor, and shall be authorized to:

(1) Prepare a comprehensive plan and program for homeland security, such plan and program to be integrated and coordinated with the plans of the federal government and of other states to the fullest possible extent, including plans for the security of critical infrastructure licensed or regulated by agencies of the federal government;

(2) Cooperate with the president of the United States and the heads of the armed forces, with the U.S. Department of Homeland Security, and with the officers and agencies of other states in matters pertaining to the security and defense of the state and nation;

(3) Assist in the utilization of the services and facilities of existing officers and agencies of the state and the political subdivisions of the state for homeland security issues; and

(4) Assist state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with this act and with the orders, rules, and regulations made pursuant to this act.

SECTION 9.

When the governor declares a state of emergency as authorized in Section 58-2-107, and such emergency is related to homeland security, the commissioner shall have the following additional powers, under the direction and control of the governor:

(1) Enforce all laws, rules, and regulations relating to homeland security and direct state resource allocations when required; provided, this act shall not vest authority to enforce the criminal laws of this state in the commissioner of homeland security, or the deputies or personnel of the department;

(2) Sell, lend, lease, give, transfer, or deliver materials or perform services for homeland security purposes on such terms and conditions as the governor shall prescribe and without regard to the limitations of any existing law, and account to the state treasurer for any funds received for such property;

(3) Perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population and achieve the purposes of this act;

(4) Assist the department of agriculture and the department of health to employ such measures as the quarantine of persons, animals, plants, fruits, or food products, as may be reasonably necessary for the purpose of securing compliance with this act; and

(5) In coordination with the department of transportation and department of safety, with due consideration to the recommendations of local authorities, formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement over public highways and streets of people, troops, or vehicles, and materials for national defense or for use in any defense industry, and coordinate the activities of the departments or agencies of the state and of the political subdivisions of the state concerned directly or indirectly with public highways and streets, in a manner that will best effectuate such plans.

SECTION 10. Whenever the federal government or any agency or officer of the federal government, any other state, or any person, firm, or corporation offers to the state or, through the state, to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of homeland security, the state, acting through the commissioner, or such political subdivision, acting through its governing body, may accept the offer, and, upon acceptance, the commissioner or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or political subdivision. This provision shall not include grants listed in 42 U.S.C. § 5121 through 42 U.S.C. § 5206, the Robert T. Stafford Disaster Relief Act.

SECTION 11. The department may coordinate the receipt, distribution, and monitoring of all funds available for homeland security purposes that may be appropriated, or provided by any grant program, to any political subdivision of the state in amounts not to exceed the amounts expended, or to be expended, by the political subdivision for training, planning, education, exercises, personnel, and administrative costs of local homeland security preparedness.

SECTION 12.

(a) There is hereby created a homeland security task force to be composed of the following members:

- (1) The governor, as chair;
- (2) The commissioner of homeland security;
- (3) The director of the Tennessee emergency management agency;
- (4) The adjutant general;
- (5) The attorney general and reporter;
- (6) The commissioner of agriculture;
- (7) The commissioner of health;
- (8) The commissioner of safety;
- (9) The commissioner of transportation;
- (10) The commissioner of finance and administration;
- (11) The state fire marshal;

(12) A representative of county governments selected by the governor from a list of three (3) persons submitted by the Tennessee county commissioners association;

(13) A representative of municipal governments selected by the governor from a list of three (3) persons submitted by the Tennessee municipal league;

(14) A representative of county law enforcement agencies selected by the governor from a list of three (3) persons submitted by the Tennessee sheriffs association;

(15) A representative of municipal law enforcement agencies selected by the governor from a list of three (3) persons submitted by the Tennessee association of chiefs of police;

(16) A representative of paid fire departments appointed by the speaker of the senate;

(17) A representative of volunteer fire departments appointed by the speaker of the house of representatives;

(18) A representative of local emergency management agencies appointed by the speaker of the house of representatives;

(19) A representative of local emergency communications districts appointed by the speaker of the senate;

(20) A representative of the airport authorities located within the state appointed by the speaker of the senate;

(21) A representative of the judicial branch of government of Tennessee appointed by the chief justice of the Tennessee supreme court; and

(22) Other representatives as deemed necessary, to be appointed by the governor.

(b) The membership of the homeland security task force shall be inclusive and reflect the racial, gender, ethnic, geographic, urban/rural, and economic diversity of the state.

(c) The task force shall meet at least twice each year, and at other times when convened by the governor, for the purpose of advising the commissioner of homeland security commissioner on the comprehensive plan and program for homeland security and such other matters as determined by majority vote of the task force.

SECTION 13. All functions under this act and all other activities relating to homeland security are declared to be governmental functions and protected by the Tennessee governmental tort liability act compiled in title 29, chapter 20.

SECTION 14. Records and information obtained by the department, the task force, and the joint legislative committee on homeland security pursuant to this act are not public records and shall not be subject to disclosure.

SECTION 15.

(a) The joint legislative committee on homeland security oversight is hereby created. The committee shall be composed of three (3) members of the senate, appointed by the speaker of the senate and three (3) members of the house of representatives appointed by the speaker of the house of representatives. Each member shall serve a term on the committee concurrent with the legislative term of the member. Vacancies shall be filled by the original appointing authority. Members shall serve at the pleasure of the appointing speaker.

(b) Each member of the committee shall be entitled to regular legislative compensation, per diem, and travel expenses for each day he or she attends a meeting of the committee. Members shall not receive additional compensation or per diem when the general assembly is in session.

(c) The committee shall review the operations of the department and shall report thereon annually to the general assembly. The report shall include, but not be limited to, suggestions for legislation to improve the operation and management of the department.

(d) The department shall report quarterly to the committee regarding the receipt and disbursement of federal funds for homeland security.

(e) The initial meeting of the committee shall jointly be called by the speaker of the house of representatives and the speaker of the senate. The member with the longest continuous service in the general assembly shall chair the initial meeting. The committee shall organize itself at the first meeting and elect from among its membership a chair and a vice chair. The committee shall hold regular meetings at least quarterly.

SECTION 16. A violation of this act shall be punishable as a Class A misdemeanor.

SECTION 17. Upon the effective date of this act the office of homeland security in the department of safety is transferred to and made a part of the department of homeland security and upon the effective date of this act all functions of the office of homeland security shall be administered by and shall be under the control of the commissioner of homeland security.

SECTION 18. The commissioner of finance and administration with the assistance and approval of the department of human resources, after consultation with the department of safety, shall cause to be transferred to the department of homeland security any filled or unfilled, authorized and funded positions assigned to the office of homeland security. The process of transferring the positions and employees pursuant to this act shall be completed by January 1, 2009.

SECTION 19. For administrative purposes, 2008-2009 fiscal year appropriations to the department of safety for the operation of the office of homeland security shall be transferred to the department of homeland security and the department of finance and administration shall revise the present budget as well as all future budgets of the department of safety to reflect the provisions of this act.

SECTION 20. All personal property, equipment and other materials made available to the department of safety for the operation of the office of homeland security shall be transferred to the custody and control of the department of homeland security.

SECTION 21. The department of homeland security, through the commissioner, has the authority to receive, administer and supervise any and all grants and funds from whatever source, including federal, state, county and municipal governments, and funds received from non-governmental sources, with respect to the programs or functions of the department of homeland security.

SECTION 22. All contracts or leases entered into prior to the effective date of this act, by the office of homeland security with respect to any program or function transferred by this act with any entity, corporation, agency, enterprise or person shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on the effective date of this act, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of homeland security, unless and until such contracts or leases are amended, modified or terminated by the parties thereto.

SECTION 23.

(a) All rules, regulations, orders and decisions issued or promulgated by the office of homeland security shall remain in full force and effect and shall be administered and enforced by the department of homeland security. The department of homeland security, through the commissioner, shall have the authority to modify or repeal orders or rules and regulations previously issued and to adopt, issue or promulgate new orders or rules and regulations as may be necessary for the administration of the programs or functions transferred by this act.

(b) On the effective date of this act, all references to the office of homeland security in the department of safety contained in any forms, legal documents, notices and papers of any kind in the possession of or issued by the department of safety or the office of homeland security shall be deemed references to the department of homeland security and any actions thereon may be brought or maintained in the name of the department of homeland security as the successor in interest and shall receive the same force and effect as if brought the name of the predecessor office.

(c) References to the office of homeland security appearing elsewhere in this code shall be deemed references to the department of homeland security.

(d) The Tennessee code commission is directed to revise appropriate references to the "office of homeland security" in the code as supplements are published and volumes are replaced. Provided, the department of homeland security shall exhaust the existing stock of office products with the former designation before ordering new office products with the new title authorized by this act.

SECTION 24. The transfer of the functions and activities of the office of homeland security to the department of homeland security created by this act shall not, because of the transfer, result in any career service employee suffering loss of employment, compensation, benefits or civil service status. Such rights, benefits and compensation shall continue without any impairment, interruption or diminution; provided, the department may engage in disciplinary actions or reductions in force as provided for in law. The commissioner of human resources is authorized to enforce this section and shall determine that the rights, benefits and compensation are not impaired, interrupted or diminished. Any employee aggrieved by any impairment in violation of this section shall have the right to seek redress through the grievance procedure established in § 8-30-328.

SECTION 25. Tennessee Code Annotated, Section 4-3-101, is amended by adding a new item thereto, as follows:

() Department of homeland security;

SECTION 26. Tennessee Code Annotated, Section 4-3-111, is amended by adding a new item thereto, as follows:

() Commissioner of homeland security, for the department of homeland security;

SECTION 27. Tennessee Code Annotated, Section 4-29-231(a), is amended by adding a new item thereto, as follows:

() Department of homeland security, created by Section 5 of this act;

SECTION 28. The department of homeland security is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this act.

SECTION 29. This act shall take effect upon becoming a law, the public welfare requiring it.